

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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Jeffrey Charles Burfeindt,

Plaintiff,

**Civil Action No.  
1:10-CV-123  
GLS/RFT**

- against -

Nina Postupack, Hudson Valley Federal Credit Union,  
Gerald C. Roth, Esquire, Mark A. Krohn, Esquire, State of  
New York,

Defendants.

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**MEMORANDUM OF LAW  
IN SUPPORT  
OF DEFENDANTS' MOTION TO DISMISS**

Defendants Hudson Valley Federal Credit Union and Gerald C. Roth, Esquire submit this Memorandum of Law in Support of their Motion to Dismiss the Complaint herein pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted, and pursuant to Fed. R. Civ. P. 12(e).

Fed. R. Civ. P. 12(b)(6) provides that a defendant may make a motion to dismiss a complaint for failure to state a claim upon which relief can be granted. It is respectfully submitted that the complaint herein requires such relief.

A review of the subject complaint will show that it contains over 70 pages of rambling, seemingly random allegations and facts. The complaint contains legal arguments and references to other cases both in and out of this jurisdiction. What the complaint does not do is state the basis upon which this complaint is seeking any relief against any of the Defendants therein.

While reference is made in the complaint to the mortgage held by Defendant Hudson Valley Federal Credit Union and the loan given in connection with said mortgage, plaintiff fails to allege what said Defendant has done to cause any damages to plaintiff. Plaintiff has obviously filed the complaint in response to the pending foreclosure action and foreclosure sale in Supreme Court, Ulster County, and any issues with respect to that mortgage should be addressed in State Court within the confines of the foreclosure action. That being said, there is nothing comprehensible alleged in the complaint which would remotely amount to a valid cause of

action against defendant Hudson Valley Federal Credit Union upon which relief can be granted. Therefore, the complaint should be dismissed against Defendant Hudson Valley Federal Credit Union.

Likewise, the complaint fails to state any cause of action against defendant Gerald C. Roth, Esquire. In fact, the only mention of Gerald C. Roth, Esquire in the complaint seems to be in the caption and that he was an attorney for Hudson Valley Federal Credit Union in the foreclosure action. Nowhere in the complaint's rambling pages does it allege any cause of action or basis for relief against Gerald C. Roth, Esquire, nor does any cause of action arise merely from Gerald C. Roth's representation of Hudson Valley Federal Credit Union in the foreclosure action pending in State Court. As such, the complaint should be dismissed against Defendant Gerald C. Roth, Esq.

Alternatively, Defendants seek dismissal of this action pursuant to Fed. R. Civ. P. 12(e). It is respectfully submitted that the complaint herein is so vague and ambiguous that Defendants cannot be expected to reasonably prepare a responsive pleading thereto. The complaint is nothing more than 70 pages of rambling, incoherent allegations, most of which have nothing to do with the parties hereto. Therefore, the Court should dismiss this action on this basis as well.

Alternatively, the Court should Order plaintiff to provide a more definite statement of pleading pursuant to Fed. R. Civ. P. 12(e) if the Court expects the defendants to provide a meaningful response thereto.

Upon review of the complaint, the court should clearly see that most of what is being alleged here has nothing to do with any of the parties to this action. Based on the references therein to other cases and to parties who have nothing to do with this matter, it can only be surmised that Plaintiff copied this complaint from another source and attempted to somewhat adapt it to his circumstances. The Court should not be fooled by these tactics. Clearly, this complaint alleges nothing which amounts to a valid cause of action upon which relief can be granted, and it is nothing more than a waste of this Court's and the Defendants' valuable time.

**WHEREFORE**, Defendants' motion to dismiss this action, pursuant to Fed. R. Civ. P. 12(b)(6) and/or Fed. R. Civ. P. 12(e) should be granted in all respects, and for such other and further relief as to this Court seems just and proper.

Dated: Carle Place, New York  
February 24, 2010

/s/ Pranali Datta  
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IN SUPPORT  
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To

Attorney(s) for  
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Service of a copy of the within

Dated,

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Attorneys(s) for

Compliance with Rule 130-1.1a

/s/ Pranali Datta

Pranali Datta, Esq.